HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 151 of 2005

APPELLANT plaintiff : Smt. Indu Mishra, W/O-Madhusudan Mishra, Aged about 40 years, R/O - Prayag Kunj, Koriya Road, Bajrang Chowk, Santoshi Nagar, Police Station - Tikrapara, Tahsil & Dist. Raipur (C.G.)

Versus

RESPONDENTS Defendants :
1) Ashok Kumar Verma, Aged about 46 years, S/O-Kripashankar Verma, Occupation-Land broker, R/O-Sundar Nagar, Raipur (C.G.), C/o - Matiya wale Maharaj, First floor, Mahadev, Ghat Road, Sundar Nagar, Raipur, Police Station - Purani Basti, Raipur (C.G.)
: 2. State of Chhattisgarh, Through-Collector, Raipur
: 3. Vijay Kumar Anant, S/O-Sakhram Anant, Present address-House no.724, Sundar Nagar, Police Station-Purani Basti, Raipur (C.G.) Office T.S.I. Regional Transporting Department, Shankhk barrier, Jharkhand Border, Distt-Jashpur (C.G.)

Shri Y.C.Sharma, Counsel for the appellant.
Respondent/Defendant-Ashok Kumar Verma is absent, though seved.
Respondent No.2/State by Shri Akhil Agrawal, PL.
Respondent No.3 is not served.

ORAL ORDER
(Passed on 13.3.2007)

The following oral order of the Court was passed by Dilip Raosaheb Deshmukh, J.

The appellant is aggrieved by an order dated 12.05.2005 passed by 3rd Additional District Judge, Raipur whereby in Civil Suit No.5-A of 2005, on 12.05.2005 i.e. the date of evidence although the plaintiff and her witness Madhusudan Mishra were present, yet on the ground that the counsel for the plaintiff was absent, the suit was dismissed under Order 17 Rule 3 C.P.C.

2. In the above mentioned situation, this appeal is being disposed of without notice to respondent No.3 who is a subsequent purchaser of the suit property from respondent No.1 during the pendency of the suit.

3. Heard.

4. The above mentioned Civil Suit No. 5-A of 2005 was fixed on 13.04.2005 for disposal of some interlocutory applications. On that day, learned 3rd Additional District Judge, Raipur directed the plaintiff to file list of witnesses if not already filed and to pay process fee for summoning her witnesses and fixed the case on 12.05.2005 for evidence. On 12.05.2005, the plaintiff filed an application under Order 6 Rule 17 of C.P.C. and another application under Order 7 Rule 14 C.P.C. Both these applications were dismissed by the learned 3rd Additional District Judge, Raipur. Even though the plaintiff and her witness Madhusudan Mishra were present in Court, yet after dismissing the aforesaid interlocutory applications, the learned 3rd Additional District Judge, Raipur, fixed the time for recording of evidence at 4.00 p.m. The case was called at 5.00 p.m. The plaintiff-Smt. Indu Mishra and her witness Madhusudan Mishra were again present. The learned lower Court proceeded under Order 17 Rule 3 C.P.C. on the ground that Shri Bawaria, learned counsel for the plaintiff, though aware that the suit was to be taken up at 4.00 p.m. for recording of evidence, was absent

5. I have perused the record. First of all, the presence of the counsel for the plaintiff was not mentioned in the order sheet which was written on 12.05.2005 when the case was first called. The plaintiff and her witness Madhusudan Mishra were present in Court. Instead of proceeding to record the evidence for the plaintiff then and there the matter was adjourned for recording of evidence at 4.00 p.m. However, the case was not taken up at 4.00 p.m. but was called at 5.00 p.m. It was thus practically impossible for the lower Court to begin to record the evidence of the plaintiff at 5.00 p.m. On that day even at 5.00 p.m. the plaintiff and her witness Madhusudan Mishra were present. Thus there was absolutely no default on the part of the plaintiff and the Court wholly erred in proceeding under Order 17 Rule 3 of C.P.C. Since the case was called at 5.00 p.m. and the plaintiff and her witness Madhusudan Mishra were present the Court ought to have adjourned the case for the next day for recording of her evidence. In this view of the matter, the impugned order is perverse and is liable to be set aside.

6. The appeal is allowed. The impugned order dated 12.05.2005 is set aside. The learned lower Court is directed to proceed afresh from the stage of evidence in accordance with law, after issuing fresh notice to the parties. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani